



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

January 11, 1991

OFFICE OF
GENERAL COUNSEL

Craig F. Stanovich, CPCU
Vice President
BRALEY AND WELLINGTON INSURANCE AGENCY CORP.
44 Park Avenue
Worcester, MA 01609

Dear Mr. Stanovich:

I am responding to your November 27, 1990, letter to Mr. Sammy Ng regarding the financial responsibility requirements for underground storage tanks (USTs).

EPA's financial responsibility requirements for USTs are set forth at 40 CFR Part 280, subpart H (1990). Coverage for corrective action is required by 40 C.F.R. 280.93. If the owner or operator chooses insurance as the means of demonstrating financial responsibility, the policy must comply with 40 C.F.R. 280.97. Note that 40 C.F.R. 280.93(d) allows an owner or operator to use separate mechanisms or separate combinations of mechanisms to demonstrate the different categories for which assurances of financial responsibility are required.

Your letter asked whether coverage for on-site corrective action is required. As explained in the preamble to the final financial regulation, it is. 53 Fed Reg. 43322, 43348 (Oct. 26, 1988). Thus coverage limited to "the existence of imminent and substantial danger to third parties resulting from a pollution condition" would not be sufficient to provide the required corrective action coverage.

You inquired further about the meaning of the phrase "subject to the terms, conditions, limits, and limitations of liability and exclusions of the policy." The phrase quoted above is not exactly the phrase required by the regulations. In a rule published on November 9, 1989, EPA added to the required language of both the endorsement and the certificate of insurance for insurance intended to provide evidence of financial responsibility the phrase "in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy." The preamble explained that this was added "to clarify that these instruments do not narrow or broaden the scope of coverage provided in the policy itself." 54 Fed. Reg. 47081 (November 9, 1989).

If you have further questions, I can be reached at 202/245-3710.

Sincerely,

/s/

Lee R. Tyner
Attorney
Solid Waste & Emergency
Response Division (LE-132S)

cc: Sammy Ng